

Mark L. Javitch (CA SBN 323729)

Javitch Law Office

3 East 3rd Ave. Ste. 200

San Mateo, CA 94401

Telephone: (650) 781-8000

Facsimile: (650) 648-0705

mark@javitchlawoffice.com

*Attorney for Plaintiff*

*and the Putative Class*

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

JON NELSON, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

AMERICAN DIRECT FUNDING L.L.C.,  
a California limited liability company, and  
JOHN DOE, an unknown business entity,

Defendants.

Case No.: \_\_\_\_\_

**CLASS ACTION COMPLAINT  
DEMAND FOR JURY TRIAL**

## **CLASS ACTION COMPLAINT**

1  
2 1. Plaintiff JON NELSON (“Plaintiff”) brings this Class Action Complaint and  
3 Demand for Jury Trial against Defendant AMERICAN DIRECT FUNDING LLC.  
4 (“American Direct”) and Defendant JOHN DOE (“John Doe” or together, “Defendants”)  
5 to stop their illegal practice of calling consumers and playing an artificial or prerecorded  
6 voice, and to obtain redress for all persons injured by their conduct. Plaintiff alleges as  
7 follows upon personal knowledge as to himself and his own acts and experiences, and,  
8 as to all other matters, upon information and belief, including investigation conducted by  
9 his attorney.

### **NATURE OF THE ACTION**

10  
11 2. American Direct provides loans and financing services. As a part of their  
12 marketing, American Direct called thousands of consumers and played an artificial or  
13 prerecorded voice message advertising their financing services.

14 3. Defendant did not obtain express written consent prior to placing these  
15 artificial or prerecorded voice calls and, therefore, are in violation of the Telephone  
16 Consumer Protection Act (“TCPA”), 47 U.S.C. § 227.

17 4. Congress enacted the TCPA in 1991 to restrict the use of sophisticated  
18 telemarketing equipment that could target consumers *en masse*. Congress found that  
19 these calls were not only a nuisance and an invasion of privacy to consumers specifically  
20 but were also a threat to interstate commerce generally. See S. Rep. No. 102-178, at 2-3  
21 (1991), as reprinted in 1991 U.S.C.C.A.N. 1968, 1969-71.

22 5. The TCPA targets unauthorized calls playing prerecorded voices exactly like  
23 the ones alleged in this case, based on Defendants’ use of technological equipment to  
24 spam consumers with its advertising on a grand scale.

25 6. By placing the calls at issue, Defendants violated the privacy and statutory  
26 rights of Plaintiff and members of the Class.  
27  
28



## FACTS SPECIFIC TO PLAINTIFF

18. On or around April 21, 2022 at 11:22 AM, Plaintiff received an unsolicited phone call from American Direct on his cell phone from the phone number 402-406-2527.

19. When Plaintiff answered the phone, he heard an artificial or prerecorded voice asking questions. Plaintiff stayed on the line and the voice eventually said “let me transfer you to a funding specialist.”

20. To identify the caller, Plaintiff stayed on the line and was connected with a sales representative from Defendant American Direct.

21. Plaintiff also received several follow up voice messages and solicitation text messages from American Direct.

22. Plaintiff never consented to receive calls from Defendants. Plaintiff had never heard of Defendants and had no relationship whatsoever with Defendants prior to these interactions.

23. Defendants’ calls violated Plaintiff’s statutory rights and caused actual and statutory damages.

24. In addition to causing statutory damages, Defendant’s illegal calls caused annoyance, intrusion on privacy and seclusion, wasted battery life and time to Plaintiff

## CLASS ALLEGATIONS

25. Class Definition: Plaintiff brings this action pursuant to Federal Rule of Civil Procedure 23(b)(2) and 23(b)(3) on behalf of Plaintiff and the class defined as follows:

**Class.** All persons who: (1) from the last 4 years to present (2) whose cellular phones were called (3) and played an artificial or prerecorded voice (3) to promote Defendants’ products or services;

26. The following people are excluded from the Class: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendants, Defendants’ subsidiaries, parents, successors, predecessors, and any entity in which the

1 Defendants or their parents have a controlling interest and its current or former  
2 employees, officers and directors; (3) persons who properly execute and file a timely  
3 request for exclusion from the Class; (4) persons whose claims in this matter have been  
4 finally adjudicated on the merits or otherwise released; (5) Plaintiff's counsel and  
5 Defendants' counsel; and (6) the legal representatives, successors, and assigns of any  
6 such excluded persons.

7 27. Numerosity: The exact number of members of the Class is unknown and not  
8 available to Plaintiff, but it is clear that individual joinder is impracticable. On  
9 information and belief, Defendants placed telephone calls to thousands of consumers  
10 who fall into the definition of the Class. Members of the Class may be identified through  
11 Defendants' records.

12 28. Typicality: Plaintiff's claims are typical of the claims of other members of  
13 the Class, in that Plaintiff and members of the Class sustained damages arising out of  
14 Defendants' uniform wrongful conduct and unsolicited telephone calls.

15 29. Adequate Representation: Plaintiff will fairly and adequately represent and  
16 protect the interests of the other members of the Class. Plaintiff's claims are asserted in a  
17 representative capacity on behalf of the other members of the Class. Plaintiff has no  
18 interests antagonistic to the interests of the other members of the proposed Class and is  
19 subject to no unique defenses. Plaintiff has retained competent counsel to prosecute the  
20 case on behalf of Plaintiff and the proposed Class. Plaintiff and his counsel are  
21 committed to vigorously prosecuting this action on behalf of the members of the Class  
22 and have the financial resources to do so.

23 30. Policies Generally Applicable to the Class: This class action is appropriate  
24 for certification because Defendants have acted or refused to act on grounds applicable  
25 to the Class as a whole, thereby requiring the Court's imposition of uniform relief to  
26 ensure compatible standards of conduct toward the members of the Class and making  
27 final injunctive relief appropriate with respect to the Class as a whole. Defendants'  
28 practices challenged herein apply to and affect the members of the Class uniformly, and

1 Plaintiff's challenge of those practices hinge on Defendants' conduct with respect to the  
2 Class as a whole, not on facts or law applicable only to Plaintiff.

3 31. Commonality and Predominance: There are many questions of law and fact  
4 common to the claims of Plaintiff and the Class, and those questions predominate over  
5 any questions that may affect individual members of the Class. Common questions for  
6 the Class include, but are not necessarily limited to the following:

- 7 a. Whether the phone calls played an artificial or prerecorded voice;
- 8 b. Whether Defendants obtained written express consent prior to the  
9 calls;
- 10 c. Whether members of the Class are entitled to treble damages based on  
11 the knowingness and/or willfulness of Defendants' conduct.

12 32. Superiority: This case is also appropriate for class certification because class  
13 proceedings are superior to all other available methods for the fair and efficient  
14 adjudication of this controversy as joinder of all parties is impracticable. The damages  
15 suffered by the individual members of the Class are likely be relatively small and  
16 impossible to recover, especially given the burden and expense of individual prosecution  
17 of the complex litigation necessitated by Defendants' actions. Thus, it would be virtually  
18 impossible for the individual members of the Class to obtain effective relief from  
19 Defendants' misconduct. Even if members of the Class could sustain such individual  
20 litigation, it would still not be preferable to a class action, because individual litigation  
21 would increase the delay and expense to all parties due to the complex legal and factual  
22 controversies presented in this Complaint. By contrast, a class action presents far fewer  
23 management difficulties and provides the benefits of single adjudication, economy of  
24 scale, and comprehensive supervision by a single Court. Economies of time, effort and  
25 expense will be fostered, and uniformity of decisions ensured.

26 **FIRST CAUSE OF ACTION**  
27 **Violation of 47 U.S.C. § 227(b)**  
28 **(On behalf of Plaintiff and the Class)**

33. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

1           34. Plaintiff and the TCPA Class members received unsolicited phone calls to  
2 their cellular telephones.

3           35. The calls played an artificial or prerecorded voice advertising Defendant's  
4 commercial services.

5           36. As a result of its unlawful conduct, Defendants repeatedly invaded  
6 Plaintiff's and the TCPA Class's personal privacy, causing them to suffer damages and,  
7 under 47 U.S.C. § 227(b)(3)(B), entitling them to recover \$500 in civil fines for each  
8 violation and an injunction requiring Defendants to stop its illegal calling campaign.

9           37. Defendants made the violating calls "willfully" and/or "knowingly" under  
10 47 U.S.C. § 227(b)(3)(C).

11           38. If the Court finds that Defendants willfully and/or knowingly violated this  
12 subsection, the court may increase the civil fine from \$500 to \$1500 per violation under  
13 47 U.S.C. § 227(b)(3)(C).

14                                   **SECOND CAUSE OF ACTION**  
15                   **Unlawful Prong of California Unfair Competition Law**  
16                                   **Cal. Bus. & Prof. Code §17200**  
17                                   **(On behalf of Plaintiff and the Class)**

18           39. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

19           40. The unlawful prong of California Business and Professions Code §17200  
20 prohibits any unlawful business practice.

21           41. Each of Defendants' violations of 47 U.S.C. § 227(b) vis a vis Plaintiff and  
22 the Class as described herein all constitute separate and cumulative violations of  
23 unlawful prong of §17200.

24           42. Plaintiff has and continues to incur damages that are actual and recognized  
25 by statute.

26           43. Plaintiff is authorized to pursue a private right of action against Defendants  
27 under §17204.

28           44. Plaintiff is also entitled to injunctive relief under this section.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff JON NELSON, individually and on behalf of the Class, prays for the following relief:

- a. An order certifying the Class as defined above, appointing Plaintiff as the representative of the Class and appointing his counsel as Class Counsel;
- b. An order declaring that Defendants' actions, as set out above, violates the TCPA;
- c. An order declaring that Defendants' actions, as set out above, violate the TCPA willfully and knowingly;
- d. An injunction requiring Defendants to cease all unlawful calls without first obtaining the call recipients' express consent to receive such calls, and otherwise protecting interests of the Class;
- e. An award of actual damages and/or statutory fines and penalties;
- f. An award of reasonable attorney's fees and costs pursuant to Cal. Civ. Proc. Code § 1021.5;
- g. Such other and further relief that the Court deems reasonable and just.

Dated: August 30, 2022

Respectfully submitted,

By: /s/ Mark L. Javitch

Mark L. Javitch (California SBN 323729)  
Javitch Law Office  
3 East 3rd Ave. Ste. 200  
San Mateo CA 94401  
Telephone: (650) 781-8000  
Facsimile: (650) 648-0705  
Email: mark@javitchlawoffice.com

Attorney for Plaintiff  
and the Putative Class